

1 **LEVI & KORSINSKY, LLP**  
2 Adam M. Apton (SBN 316506)  
3 Adam C. McCall (SBN 302130)  
4 44 Montgomery Street, Suite 650  
5 San Francisco, CA 94104  
Tel: (415) 291-2420  
Email: [aapton@zlk.com](mailto:aapton@zlk.com)  
Email: [amccall@zlk.com](mailto:amccall@zlk.com)

6 *Attorneys for Lead Plaintiff Glen Littleton  
and Lead Counsel for the Class*

7 [Additional counsel on signature blocks]

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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 IN RE TESLA, INC. SECURITIES  
13 LITIGATION

No. C-18-04865

Hon. Edward M. Chen

14 **GLEN LITTLETON'S OPPOSITION TO  
15 BRIDGESTONE INVESTMENT  
16 CORPORATION'S MOTION FOR  
17 RECONSIDERATION (DKT. NO. 158)**

[No hearing scheduled]

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## I. INTRODUCTION

In its November 27, 2018 Order (Dkt. No. 152), the Court resolved the pending motions of seven movants to be appointed lead plaintiff in this proceeding. As directed by *In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002), the Court considered the movants sequentially in the order of their claimed financial interests in the relief sought in this action and also considered whether they met the adequacy and typicality requirements of Rule 23. After concluding that the claimed financial interest of three movants were potentially overstated as well as finding concerns about their adequacy and typicality, the Court appointed Glen Littleton as lead plaintiff because his losses of approximately \$3.5 million were the “largest clear financial interest” and because he “held interests that cover most of the persons/entities likely to be in the class – *i.e.*, long positions in common stock, long positions in options, and short positions in options – and thus can most adequately represent the class.” 11/27/18 Order (Dkt. No. 152) at 7.

Movant Bridgestone Investment Corp. Ltd. now moves for reconsideration (Dkt. No. 158), arguing that its financial interest in the relief sought by the class is larger than Littleton and it is adequate and typical to represent the entire class alleged in this action. These arguments were made to the Court in the initial briefing on the lead plaintiff motions and at oral argument and rejected by the Court in its November 27, 2018 order. Just like the unsuccessful movant, Dany David, who also has moved for reconsideration, Bridgestone does not raise a single new fact, new case, or new argument that has not already been considered and rejected by the Court.

As identified by the Court, the fundamental weakness in Bridgestone as a lead plaintiff candidate is that it did not hold a single short position in Tesla, Inc. securities immediately before or during the class period. The alleged class in this action includes investors who held both long and short positions. It is entirely reasonable for the Court, and entirely permitted by the Private Securities Litigation Reform Act of 1995 and *Cavanaugh*, to determine that a lead plaintiff candidate who suffered no losses as a result of holding a short position is neither adequate nor typical of a class consisting in substantial part of investors who lost money from short positions. This is particularly true in a case where one primary motive identified for the fraud committed by defendant Elon Musk was an intent to deliberately harm investors who held short positions. Where it is alleged that Musk “has a long-standing public feud with short-sellers

1 and has threatened them in the recent past” and “artificially manipulated the price of Tesla securities with  
 2 objectively false tweets in order to ‘burn’ the Company’s short-sellers” (Left Complaint ¶¶17 and 31<sup>1</sup>), it  
 3 was reasonable for the Court to determine that an investor who did not hold a short position cannot  
 4 adequately represent the entire class.

5 The Court had additional reasons for doubting both the size of Bridgestone’s financial interest as  
 6 well as its adequacy and typicality. Specifically, over \$1.6 million of Bridgestone’s claimed \$3.8 million  
 7 in losses was attributable to call options with strike prices of \$450 that, according to Bridgestone and its  
 8 counsel, Bridgestone purchased *after* Defendant Musk tweeted that he was taking Tesla private at \$420  
 9 per share. It makes no sense for Bridgestone to have purchased these options with such a high strike price  
 10 if it knew that there was virtually no chance of Tesla’s stock ever surpassing that amount unless  
 11 Bridgestone either disregarded or was unaware of the tweet. Indeed, for Bridgestone to have profited on  
 12 these options, Tesla’s stock would have had to clear \$467.85 per share (the exercise price of \$450 plus the  
 13 highest premium paid of \$17.85 for these call option contracts). Whether and to what extent damages from  
 14 these securities are recoverable is a question for another day. But, at this stage, the Court was correct in  
 15 holding that Bridgestone’s losses were “uncertain for the purposes of the pending motions.” 11/27/18  
 16 Order (Dkt. No. 152) at 7.

17 Bridgestone does not provide the Court with any rationale to revisit this aspect of the decision.  
 18 Instead, Bridgestone makes a misguided attempt at trying to use the same argument to discount Littleton’s  
 19 losses by pointing to Littleton’s purchase of call options at the same strike price of \$450 per share.  
 20 However, the critical difference between Bridgestone’s call option contracts and Littleton’s call option  
 21 contracts is that Littleton bought his contracts *prior* to Defendant Musk’s tweet. In other words, Littleton  
 22 believed that Tesla’s stock would in fact continue to increase over the life of the option contract. When  
 23 Musk said he was taking Tesla private at \$420 per share, it virtually eliminated the chance of Tesla’s stock  
 24 price ever increasing over Littleton’s exercise prices and the price of those options plummeted. Thus,  
 25 when Littleton closed his positions (by selling matching call options after Musk’s tweet), he did so at a

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26       <sup>1</sup> References to the “Left Complaint ¶\_\_” refer to the complaint filed in *Left v. Tesla Inc. et al.*, 3:18-  
 27 cv-0563-EMC, Compl. ¶\_\_, Dkt. No. 1 (Sept. 6, 2018).

1 loss that he would have otherwise not incurred.

2 Finally, Bridgestone’s attempt to raise the issue of conflict of interest between Littleton’s positions  
 3 in Tesla before and during the class period is both confused and unpersuasive. Bridgestone seems to argue  
 4 first that there is no conflict, *see* Dkt. No. 158 at 6 (“there is no ‘limited fund’ or other unique conflict  
 5 here”), and then argue that the conflict is so great that it is disqualifying for Littleton, *see id.* at 8. As  
 6 discussed at length at oral argument, there are clearly potential conflicts within the alleged class with  
 7 regard to different trading positions and strategies adopted during the class period. Neither the parties nor  
 8 the Court has sufficient information to make any determinations on those issues at this early stage of  
 9 proceedings. What is in the best interests of the class, and consistent with the PSLRA and *Cavanaugh*, is  
 10 for the Court to appoint as lead plaintiff the movant with the “largest clear financial interest” who “held  
 11 interests that cover most of the persons/entities likely to be in the class – *i.e.*, long positions in common  
 12 stock, long positions in options, and short positions in options – and thus can most adequately represent  
 13 the class.” 11/27/18 Order (Dkt. No. 152) at 7. That movant was Littleton and nothing in Bridgestone’s  
 14 motion for reconsideration alters this analysis. The Court should deny Bridgestone’s motion without delay  
 15 so Littleton and his counsel can proceed without further distraction.

## 16 II. STANDARD OF REVIEW

17 A motion for reconsideration is an “extraordinary remedy, to be used sparingly in the interests of  
 18 finality and conservation of judicial resources.” *Kona Enters. v. Estate of Bishop*, 229 F.3d 877, 890 (9th  
 19 Cir. 2000). Thus, “a motion for reconsideration should not be granted, absent highly unusual  
 20 circumstances, unless the district court is presented with newly discovered evidence, committed clear  
 21 error, or if there is an intervening change in the controlling law.” *389 Orange St. Partners v. Arnold*, 179  
 22 F.3d 656, 665 (9th Cir. 1999); *accord In re LeapFrog Enter., Inc. Sec. Litig.*, No. 15-cv-00347-EMC,  
 23 2016 U.S. Dist. LEXIS 117635, at \*2 (N.D. Cal. Aug. 31, 2016); *Circle Click Media LLC v. Regus Mgmt.*  
 24 *Grp. LLC*, No. 12-CV-04000-EMC, 2016 WL 2593654, at \*2 (N.D. Cal. May 5, 2016), *aff’d* No. 17-  
 25 15088, 2018 WL 6262390 (9th Cir. Nov. 29, 2018). Bridgestone identifies no new evidence or change of  
 26 controlling law in his motion; it, therefore, must show that the Court committed clear error in appointing  
 27 Littleton as lead plaintiff.

1       **III. THE COURT CORRECTLY HELD THAT BRIDGESTONE WAS NOT THE MOST**  
 2       **ADEQUATE PLAINTIFF UNDER THE PSLRA AND CAVANAUGH.**

3       **A. The Court Correctly Held That Bridgestone Was Not Adequate or Typical Because,**  
 4       **Unlike Many Class Members, It Never Held a Short Position.**

5       The Court correctly followed *In re Cavanova*, *supra*, when deciding the various motions for lead  
 6 plaintiff. In *Cavanaugh*, the Ninth Circuit explained the process that courts should follow when selecting  
 7 a plaintiff under the PSLRA. The Ninth Circuit explained that the Court must first engage in a comparative  
 8 analysis between the rival movants based solely on their “financial interest in the relief sought by the  
 9 class.” 306 F.3d at 730. The Ninth Circuit does not direct any particular method for measuring “financial  
 10 interest” and permits the Court to use any method that is “both rational and consistently applied”. *Id.* at  
 11 730, n.4. “In other words, the district court must compare the financial stakes of the various plaintiffs and  
 12 determine which one has the most to gain from the lawsuit.” *Id.* at 730. Once it has identified the movant  
 13 with the largest financial interest, the Court must then examine, based on the pleadings and other evidence  
 14 submitted as part of the lead plaintiff motions, whether that movant is typical and adequate to represent  
 15 the entire class. *Id.*

16       This is exactly what the Court did. It first considered the movants Tempus International Fund and  
 17 Opportunity Unique Fund Inc. but found that their claimed losses of more than \$15.8 million were  
 18 probably inflated. The Court also had concerns over their adequacy and typicality because they only held  
 19 short positions and the class contains investors who were both short and long. 11/27/18 Order (Dkt. No.  
 20 152) at 4. The Court then considered the movant Tesla Investor Group, led by Andrew Left, but was  
 21 concerned about the adequacy of a group of investors serving as lead plaintiff as well as Left’s outspoken  
 22 history regarding Tesla. *Id.* at 6.

23       The Court then considered Bridgestone’s motion. The Court declined to appoint Bridgestone as  
 24 lead plaintiff due to concerns over its adequacy and typicality. Specifically, “Bridgestone held long  
 25 positions – both in common stock and options – but does not appear to have held any short positions.”  
 26 11/27/18 Order (Dkt. No. 152) at 6. The Court’s decision was correct. As discussed at length in the  
 27 underlying briefing and at the hearing on November 15, 2018, the fact that Bridgestone did not hold any

short positions exposed it and the class to unique defenses relating to standing. *See, e.g., In re Zynga Inc. Sec. Litig.*, No. 12-cv-04007-JSW, 2014 WL 721948, at \*3 (N.D. Cal. Feb. 25, 2014) (dismissing claims because lead plaintiff(s) lacked standing); *In re Royal Bank of Scotland Grp. PLC Sec. Litig.*, 765 F. Supp. 2d 327, 339 (S.D.N.Y. 2011) (same); *In re Bank of America Corp. Securities, Derivative, and Employment Retirement Income Security Act (ERISA) Litigation*, No. 09-MD-2058-PKC, 2011 WL 3211472, at \*12 (S.D.N.Y. July 29, 2011) (same); *In re Wells Fargo Mortgage-Backed Certificates Litig.*, 712 F. Supp. 2d 958, 965 (N.D. Cal. 2010) (same). It also raised potential pragmatic concerns about the incentive or willingness of Bridgestone to prosecute claims and recover losses for investors who held short positions when it has no financial interest in the recovery. *See In re Veritas Software Corp. Securities Litigation*, 496 F.3d 962 (9th Cir. 2007) (resolving objections of option traders to settlement that initially excluded them and then only granted them 2% of the recovery); *In re New Oriental Education & Technology Group. Securities Litigation*, 293 F.R.D. 483 (S.D.N.Y. 2013) (lead plaintiff's amended complaint dropped option traders who were initially part of class); *In re Critical Path, Inc.* (court rejected option trader's objection to settlement that excludes options).

The risk that Bridgestone might fail to adequately represent short investors is particularly acute in this case where an identified motive for the fraud is an animus towards short investors. Musk allegedly “has a long-standing public feud with short-sellers and has threatened them in the recent past” Left Complaint ¶31. As alleged by the Securities & Exchange Commission, on May 4, 2018, Musk tweeted that a “short burn of century comin [sic] soon” and on June 17, 2018, he tweeted that short sellers “have about three weeks before their short position explodes.” Apton Decl., Ex. A, at ¶16.<sup>2</sup> Accordingly Musk “artificially manipulated the price of Tesla securities with objectively false tweets in order to ‘burn’ the Company’s short-sellers”. Left Complaint at ¶¶17 and 31. Further, it appears that much of the damages that can be preliminarily identified were suffered by investors with a short position. *See* 11/15/18 Transcript (Apton Decl., Ex. B) at 28 (counsel noting that short damages may be “a huge dollar amount,

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<sup>2</sup> The September 27, 2018 complaint filed by the United States Securities and Exchange Commission against Elon Musk captioned *SEC v. Musk*, Case 1:18-cv-08865 (S.D.N.Y.) is attached as “Exhibit A” to the Declaration of Adam M. Apton in Support of Glen Littleton’s Opposition to Bridgestone Investment Corporation’s Motion for Reconsideration.

1 and it's really going to eat up any settlement" compared to long damages).<sup>3</sup> Short investors and Musk's  
 2 attitude towards them will be an important part of this case and it was reasonable, if not imperative, for  
 3 the Court to determine that an investor like Bridgestone who did not hold a short position cannot  
 4 adequately prosecute this aspect.

5 Bridgestone correctly identifies that there is no current conflict between members of the class as  
 6 alleged. *See* Dkt. No. 158 at 6. Based on the information currently available the interests of short and long  
 7 investors as well as traders in stock and options are aligned. Further, as counsel for Bridgestone correctly  
 8 noted at oral argument, it was premature to start limiting the class in any way through the appointment of  
 9 lead plaintiff or make any determinations about damages. *See* 11/15/18 Transcript (Apton Decl., Ex. B)  
 10 at 17. That said, it would be myopic for the Court to ignore the potential for these conflicts in the future  
 11 either in the context of class certification or allocating a limited settlement fund.<sup>4</sup> The Court properly  
 12 considered the potential for future conflict by noting, at this early stage, the importance for the lead  
 13 plaintiff to have "skin in the game" with regard to all interests reflected in the entire class as alleged so  
 14 that they can be adequately represented. The Court achieved this with its order appointing Littleton.

15 This consideration of the nature of the claims and class alleged in this proceeding when  
 16 determining whether a movant is an adequate and typical member of the class is quite different from the  
 17 considerations criticized by the Ninth Circuit in *Cavanaugh*. There, the district court had chosen the lead  
 18 plaintiff almost exclusively on the basis of the movant's selection of lead counsel and negotiation of a  
 19 non-binding fee arrangement. 306 F.3d at 734-35. This sort of "beauty contest" that focused on an issue  
 20 of only tangential importance is very different from the detailed and thoughtful consideration undertaken  
 21 by the Court of the likely members of the class alleged in this proceeding and potential conflicts or other  
 22 failures of representation that might arise. Under the circumstances as alleged in this case, it is hard to see

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23       <sup>3</sup> The transcript from the November 15, 2018 proceeding before Judge Edward Chen is attached as  
 24 "Exhibit B" to the Declaration of Adam M. Apton in Support of Glen Littleton's Opposition to  
 25 Bridgestone Investment Corporation's Motion for Reconsideration.

26       <sup>4</sup> Further, the potential conflicts in this case are not typical of other securities class actions where  
 27 Courts have generally not found potential conflicts between class members who sold all their stock and  
 class members who still retain some stock to be disqualifying. *See, e. g., Luna v. Marvell Tech. Grp., Ltd.*,  
 No. C 15-05447 WHA, 2017 WL 4865559, at \*5 (N.D. Cal. Oct. 27, 2017).

1 how a Court could undertake the necessary adequacy and typicality analysis required by the PSLRA and  
 2 *Cavanaugh* without considering “the interests that cover most of the persons/entities likely to be in the  
 3 class” and comparing them to the trading positions held by the lead plaintiff movant. 11/27/18 Order (Dkt.  
 4 No. 152) at 7.

5       Although Bridgestone may disagree with the Court’s decision, disagreement without anything  
 6 more is not enough to warrant reconsideration. *See, e.g., Stephens v. Cty. of Haw. Police Dep’t*, 584 F.  
 7 App’x 506, 507 (9th Cir. 2014) (affirming denial of motion for reconsideration where movant “merely  
 8 reiterated [his] disagreement with the order granting summary judgment”); *Bryant v. Farmer*, 460 F.  
 9 App’x 644, 645 (9th Cir. 2011) (affirming denial of motion for reconsideration where movant “failed [to]  
 10 establish any ground for such relief other than his disagreement with the court’s judgment”).<sup>5</sup>

11       **B. Bridgestone Still Fails To Rebut Concerns About The Size of Its Financial Interest.**

12       In its order, the Court noted that approximately \$1,641,391 of Bridgestone’s overall claimed loss  
 13 of \$3,869,744, or 42%, was attributable to transactions that were arguably unrelated to the alleged fraud.  
 14 *See* 11/27/18 Order (Dkt. No. 152) at 6-7. Those transactions consisted of January 2019 \$450 call options  
 15 supposedly purchased *after* Defendant Musk’s August 7, 2018 tweet (*i.e.*, “. . . funding secured.”).  
 16 Whether and to what extent Bridgestone would be able to establish “reliance” for these transactions was  
 17 the issue that led the Court to develop “concerns” regarding Bridgestone’s “adequacy or typicality.” *Id.* at  
 18 6.

19       Bridgestone argues that the Court erred in considering this issue because Littleton did not provide  
 20 proof in support of the argument. Bridgestone Mot. at 8-9.<sup>6</sup> This is not true. Bridgestone’s certification

21       <sup>5</sup> It is also consistent with the PSLRA and permitted by *Cavanaugh* for the Court to determine that  
 22 a lead plaintiff movant such as Bridgestone who suffered no losses as a result of holding a short position  
 23 does not have the largest financial interest in the relief sought by a class consisting in substantial part of  
 24 investors who lost money from short positions. Either of the grounds of financial interest or adequacy and  
 25 typicality ground would be sufficient for the Court to deny Bridgestone’s motion to be appointed lead  
 26 plaintiff and continue, in sequential fashion, to Littleton’s motion.

27       <sup>6</sup> Bridgestone also references the fact that Littleton raised this argument for the first time in reply.  
 28 Bridgestone Mot. at 3-4, 9. As explained at the November 27, 2018 hearing, PSLRA lead plaintiff motions  
 29 are often briefed in an atypical fashion, given that substantive arguments are not truly made until the  
 30 opposition brief is filed. 11/15/18 Transcript (Apton Decl., Ex. B) at 53. In any event, Bridgestone has  
 31 now been given a full opportunity to respond to the argument by way of the Court’s decision to hear the

1 and loss chart, which it filed in support of its motion for lead plaintiff, listed its various transactions in  
 2 Tesla securities before and during the Class Period. *See Bridgestone Certification and Loss Chart*, Dkt.  
 3 Nos. 52-1, 52-2, 52-5. The charts show that Bridgestone purchased the January 2019 \$450 call options  
 4 **during** the Class Period, *i.e.*, after Defendant Musk's August 7, 2018 tweet. Thus, Bridgestone's own  
 5 sworn certification was all that was required to determine that Bridgestone would have faced a significant  
 6 "unique defense" had the Court appointed it lead plaintiff. This argument is based on the pleadings and  
 7 declarations submitted by Bridgestone itself. This is exactly the material identified as appropriate by the  
 8 Ninth Circuit in *Cavanaugh*, 306 F.3d at 730.

9       It may still be the case that Bridgestone in fact purchased these call options both ***before and after***  
 10 Defendant Musk's tweet.<sup>7</sup> If that is true, then Bridgestone most certainly has a significant "reliance"  
 11 problem. Having not altered its course of conduct in response to the tweet, Bridgestone either disregarded  
 12 it or was unaware of it. In either event, that would render Bridgestone inadequate, untypical, and  
 13 potentially subject to unique defenses. *See In re Countrywide Fin. Corp. Sec. Litig.*, 273 F.R.D. 586, 603  
 14 (C.D. Cal. 2009) (class representative atypical because she relied on "broker's supervening  
 15 misrepresentations" and not statements by defendants); *Deitz v. Comcast Corp.*, No. C 06-06352 WHA,  
 16 2007 WL 2015440, at \*5 (N.D. Cal. July 11, 2007) ("Because plaintiff did not read any of Comcast's  
 17 communications, he will be subject to a unique defense that he did not read, and thus could not have relied  
 18 on, any of the misstatements."); *see also* 1 McLaughlin on Class Actions § 4:18 (14th ed.) (Westlaw 2017)  
 19 ("[A] purported representative who lacks standing is not a member of the putative class and thus cannot  
 20 satisfy the typicality or adequate representation requirements"). In any event, under these circumstances,  
 21 Bridgestone could not possibly be aligned with the interests of other class members and adequately  
 22

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23 motion for reconsideration.

24       Musk's tweet was published on August 7, 2018 at 12:48p.m. EDT, during trading hours.  
 25 Accordingly, it is not apparent whether a trade occurring on August 7, 2018 occurred before or after the  
 26 tweet. Trading records showing the exact time of when a trade took place would resolve this ambiguity.  
 27 Despite having the opportunity to provide clarity on this issue, Bridgestone has yet to provide its trading  
 28 records to Littleton or the Court. *See, e.g., Broadfoot v. Barrick Gold Corp.*, No. 17 CIV. 3507 (NRB),  
 2017 WL 3738444, at \*1 (S.D.N.Y. Aug. 9, 2017) (granting competing movant's request for discovery  
 based on evidence contained in the certification regarding potential unique defenses).

1 represent them.

2        Given the potential reliance issues Bridgestone faces in connection with its January 2019 \$450 call  
 3 options, the Court was correct to question whether Bridgestone overstated its losses. The fact that such a  
 4 substantial portion of Bridgestone's loss (approximately \$1,641,391 or 42%) arose from these call options  
 5 gave the Court more than enough ground to reject Bridgestone's claimed financial interest in the litigation.  
 6 11/27/18 Order (Dkt. No. 152) at 7 ("This is not to say that a causally related loss based on Bridgestone's  
 7 purchase of the January 2019 call options cannot be proven; but it does make a substantial portion of its  
 8 loss assertion uncertain for purposes of the pending motions.").

9        In response to the Court's holding on this point, Bridgestone tries to use the same logic to discount  
 10 Littleton's losses. Bridgestone's argument is misguided. Critical to this issue is the fact that Littleton  
 11 unquestionably bought his call options ***prior*** to Defendant Musk's tweet. Accordingly, when he was forced  
 12 to close these positions in response to the tweet, he sustained damages as a result of the alleged fraud. To  
 13 illustrate, Littleton purchased call options with strike prices of \$450 and \$500 between December 19, 2017  
 14 and August 3, 2018 (before the tweet). By making these purchases, he believed that Tesla's stock would  
 15 increase in value before January 2020 (the expiration date). When Defendant Musk told the public that he  
 16 was taking Tesla private at \$420 per share, it virtually eliminated any and all possibility of Tesla's stock  
 17 ever appreciating to \$450 or \$500 within the life of the contract and the price dropped accordingly. In  
 18 response, Littleton promptly closed the positions by selling matching options, receiving substantially less  
 19 than he would have if anyone at that point reasonably believed the stock would ever exceed \$450 or \$500.

20        Bridgestone, on the other hand, claims that it purchased its \$450 call options after Defendant  
 21 Musk's tweet. *See* Bridgestone Loss Chart, Dkt. No. 52-5; *see also* 11/15/18 Transcript (Apton Decl., Ex.  
 22 B) at 51 (Bridgestone's counsel: "So to the extent that they're arguing that there's no reliance, they're  
 23 simply incorrect. Mr. Liu, on behalf of Bridgestone, certainly relied on the tweet in purchasing that  
 24 particular option."). If, as Bridgestone claims, it relied on Musk's tweet when purchasing the \$450 call  
 25 options, then it's unclear whether Bridgestone deserves to receive any compensation at all. Believing that  
 26 Musk was taking Tesla private at \$420, he assumed the substantial risk of Tesla's stock never surpassing  
 27 \$467.85 per share (the exercise price of \$450 plus the highest premium paid of \$17.85 for these call option

1 contracts).<sup>8</sup>

2 The Court was absolutely correct to question whether “a substantial portion of [Bridgestone’s] loss  
 3 assertion” was “uncertain for the purposes of the [lead plaintiff] motions.” *See* 11/27/18 Order (Dkt. No.  
 4 152) at 6-7. The same questions do not apply when analyzing Littleton’s losses. Moreover, while Littleton  
 5 held various positions in an effort to protect against risk (Bridgestone refers to this as “straddling,” Dkt.  
 6 No. 158 at 8), such investing strategies will not render Littleton “vulnerable at trial to a unique defense.”  
 7 *See, e.g., In re WorldCom Inc. Sec. Litig.*, 219 F.R.D. 267, 281-82 (S.D.N.Y. 2003) (holding that “[n]one  
 8 of the different strategies that these institutional plaintiffs . . . used to make investment decisions on behalf  
 9 of their beneficiaries suggests that these plaintiffs will be vulnerable at trial to a unique defense that will  
 10 defeat the presumption that they relied on the public statements about [defendant] that are at issue here . .  
 11 . . .”); *accord In re Diamond Foods, Inc.*, 295 F.R.D. 240, 252-53 (N.D. Cal. 2013) (rejecting atypicality  
 12 argument class certification notwithstanding fact that representative relied on third-party investment  
 13 advisor that performed “own research and review of publicly available information”); *In re Connexis  
 14 Corp. Sec. Litig.*, 257 F.R.D. 572, 578 (N.D. Cal. 2009) (rejecting “unique defense” argument even though  
 15 lead plaintiff “made at least some of its trades based on a computer program that was designed to mirror  
 16 a stock index”).

17 Bridgestone’s only cited authority on this point is *In re MicroStrategy Inc. Securities Litigation*,  
 18 110 F. Supp. 2d 427 (E.D. Va. 2000). That case does not change the outcome on this issue. The lead  
 19 plaintiff movant at issue in that case was a hedge fund with several problems in terms of its motion. First,  
 20 instead of providing its “specific transactions that led to a loss, [the hedge fund] submitted a conclusory  
 21 affidavit and a collection of indecipherable financial statements that purported to support the affidavit’s  
 22 conclusion” on the loss amount. *Id.* at 436. Second, “most of [the hedge fund’s] losses occurred before  
 23 defendants issued the first correction on March 20, 2000,” thus raising the question of whether the losses  
 24 were even recoverable. *Id.* at 437 n.23. Those circumstances are not present in the matter at hand and,

25 <sup>8</sup> This addresses Bridgestone’s point in the last footnote on the last page of its motion. Dkt No. 158  
 26 at 10 n.10. Although the class does include sellers, not all losses are necessarily recoverable. *See Dura  
 27 Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005). Whether and to what extent an investor holding  
 these types of options was damaged is a question for another day.

1 accordingly, *MicroStrategy* is not applicable.

2 **IV. CONCLUSION**

3 For the foregoing reasons, Littleton respectfully requests the Court deny Bridgestone's motion for  
4 reconsideration in its entirety.

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Respectfully submitted,

6 **LEVI & KORSINSKY, LLP**

7 /s/ Adam M. Apton

8 Adam M. Apton (SBN 316506)  
9 Adam C. McCall (SBN 302130)  
10 44 Montgomery Street, Suite 650  
11 San Francisco, CA 94104  
12 Tel: 415-291-2420  
13 Email: [aapton@zlk.com](mailto:aapton@zlk.com)  
14 Email: [amccall@zlk.com](mailto:amccall@zlk.com)

15 Nicholas I. Porritt (admitted pro hac vice)  
16 Alexander A. Krot III (to be admitted pro hac vice)  
17 1101 30th Street, NW, Suite 115  
18 Washington, DC 20007  
19 Tel: 202-524-4290  
Email: [nporritt@zlk.com](mailto:nporritt@zlk.com)

20 Eduard Korsinsky (to be admitted pro hac vice)  
21 55 Broadway, 10th Floor  
22 New York, New York 10006  
23 Tel: 212-363-7500  
24 Email: [ek@zlk.com](mailto:ek@zlk.com)

25 *Attorneys for Lead Plaintiff Glen Littleton and  
26 Lead Counsel for the Class*